Majlis Peguam & Anor v Tan Sri Dato' Mohamed Yusoff bin Mohamed

SUPREME COURT (KUALA LUMPUR) — CIVIL APPEAL NO 02-401-1992
ANUAR CJ (MALAYA), MOHD AZMI AND EDGAR JOSEPH JR FCJJ
21 APRIL 1997

Legal Profession *— Admission — Posting of notices of petition of admission — Whether time period in s 15(5) of the Legal Profession Act is mandatory or directory — Whether court has a general discretionary power to abridge the time period in s 15(5) — Legal Profession Act 1976 s 15(5) — Courts of Judicature Act 1964 s 25(2), para 8*

Civil Procedure *— Time — Abridgement of time — Whether 'power' in para 8 confers a general power to the court to abridge or extend time period — Whether power in para 8 can be exercised independently or whether s 25(2) is a pre-condition — Courts of Judicature Act 1964 s 25(2), para 8*

Civil Procedure *— Jurisdiction — Abridgement of time — Whether 'power' in para 8 confers a general power to the court to abridge or extend time period — Whether power in para 8 can be exercised independently or whether s 25(2) is a pre-condition — Courts of Judicature Act 1964 s 25(2), para 8*

The respondent applied by summons in chambers for abridgement of the time required under s 15(5) of the Legal Profession Act 1976 for posting notices of his petition for admission as an advocate and solicitor. As s 15(5) does not contain an express provision for abridgement, the respondent grounded his application on the additional power of the High Court as contained in para 8 of the Schedule ('the Schedule') to the Courts of Judicature Act 1964 ('the Act').

The High Court held that the three-month posting period in s 15(5) was directory and not mandatory, and that the High Court had the necessary power to allow the application upon reading s 25(2) of the Act read together with para 8 of the Schedule. The judge relied on *Lee Lee Cheng (f) v Seow Peng Kwang* [1960] MLJ 1 ('*Lee Lee Cheng*') to draw the subtle distinction between the words 'jurisdiction' used in the repealed Ordinance and 'power' used in the corresponding sections of the Act which replaced the Ordinance and reasoned that the substitution of 'power' for 'jurisdiction' in para 8 of the Schedule was a self-conferring general power, and there was no need to refer to another power-conferring statute related to the particular subject-matter before the said power could be exercised. The express powers of abridgement in ss 15(3) and 16 of the Legal Profession Act 1976 were superfluous and, even without these words, the court could still abridge the time period based on para 8 of the Schedule. The High Court thus exercised its discretion and abridged the time period to one week.

The appellants appealed against the decision, stating that the trial judge erred in law in holding that the court had the power to

extend or abridge the time period in s 15(5) of the Legal Profession Act 1976 by virtue of s 25(5) of the Act and para 8 of the Schedule. It was argued that the three-month time period in s 15(5) was mandatory, and that the deliberate omission of the abridgement clause found in ss 15(3) and 16 of the Legal Profession Act 1976 supported the mandatory nature of the time period. The adoption of *Lee Lee Cheng* was criticized and the appellants argued that the power in para 8 read with s 25(2) cannot be exercised independently in the absence of a separate power-conferring statute and that s 25(2) was a condition precedent to the exercise of powers under para 8 of the Schedule. The substitution of 'power' for 'jurisdiction' did not warrant a change in interpretation between the Ordinance and the Act. As there was none, except for s 15(5) itself, the court thus had no power to entertain the application to abridge the time period. The appellants' narrow interpretation of s 25(2) was supported by *Pahang South Union Omnibus Co Bhd v Minister of Labour & Manpower & Anor* [1981] 2 MLJ 199.

Held, allowing the appeal:

(1) (Per **Mohd Azmi FCJ**) Paragraph 8 of the Schedule is a general power-conferring provision. It is clear that the deliberate substitution of 'jurisdiction' in the repealed Ordinance with 'power' in the corresponding provisions of the Act was not influenced by *Lee Lee Cheng*, and that Parliament fully intended to confer the High Court with an outright additional general power to be exercised judicially whenever circumstances demanded, in accordance with any existing written law or rules of court relating thereto (see p 288C–D, H–I); *H Young & Co v The Mayor and Corporation of Royal Leamington SPA* (1882–83) 8 App Cases 517, *Lee Lee Cheng (f) v Seow Peng Kwang* [1960] MLJ 1 followed and *Pahang South Union Omnibus Co Bhd v Minister of Labour & Manpower & Anor* [1981] 2 MLJ 199 not followed.

(2) (Per **Mohd Azmi FCJ**) Paragraph 8 of the Schedule has no pre-conditions except that it must be exercised in accordance with any existing written law or rules of court relating thereto. It is wrong to interpret s 25(2) of the Act as a pre-condition to the exercise of power in para 8. Section 25(2) clearly provides that if there are written laws or rules of court relating to the same, then this power must be exercised in accordance with them; it does not mean that if there are no written laws or rules of court relating to the same that the power cannot be exercised at all. The literal and liberal interpretation given to the Schedule to the Act read with s 25(2) as an additional power-conferring scheme for the courts has been adopted by the majority of the Federal Court and thus it is clear that s 25(2) should not be interpreted in a narrow and pedantic way.

If Parliament intended to prohibit the exercise of this power in the absence of another statute, it would have said so in the

enacting part by direct qualification, and not by way of proviso as the proviso should not be interpreted as a qualification which is inconsistent with what is plainly expressed in the enacting part by rendering that part practically lame and useless (see pp 286G, 287B, G–I and 291I); *Damodaran v Vesudevan* [1975] 2 MLJ 231, *Zainal Abidin bin Hj Abdul Rahman v Century Hotel Sdn Bhd* [1982] 1 MLJ 260, *Aspatra Sdn Bhd & Ors v Bank Bumiputra Malaysia Bhd & Anor* [1988] 1 MLJ 97, *R Rama Chandran v The Industrial Court of Malaysia & Anor* [1997] 1 MLJ 145 and *Jennings & Anor v Kelly* [1940] AC 206 followed.

(3) (Per **Mohd Azmi FCJ**) In determining whether the time period set forth in s 15(5) of the Legal Profession Act 1976 is mandatory or directory in nature, the rule is that a prescribed time in any written law is always presumed and construed as mandatory unless there is express power in that particular law to abridge or extend time. The time period in s 15(5) is thus mandatory as Parliament had deliberately left out the express abridgement clause found in ss 15(3) and 16 of the Legal Profession Act. Merely because para 8 of the Schedule confers a general power of abridgement, it does not mean that Parliament is precluded from conferring express power of abridgement in any particular legislative provision, nor does it mean that Parliament cannot prohibit such general power from being invoked either expressly or by necessary implication. Additionally, a change in the time period in s 15(5) would affect the right of third parties from exercising their right to enter caveats against the petitioner's admission to the bar (see pp 290E–F and 291D–E, I).

(4) (Per **Mohd Azmi FCJ**) Although the High Court has the power to invoke its general discretionary power of abridgement under para 8 of the Schedule, this discretionary power must be exercised judicially, not arbitrarily or capriciously, and it ought not to be exercised unless the requirement of justice is satisfied. Hence, even if third party rights were unaffected, the court must still exercise its discretion in accordance with the correct principle. In the present case, it was wrong for the trial judge to have exercised the power of abridgement in relation to s 15(5) of the Legal Profession Act (see p 292B–C).

Cases referred to

Aspatra Sdn Bhd & Ors v Bank Bumiputra Malaysia Bhd & Anor [1988] 1 MLJ 97 (folld)

Barker v Palmer (1881) 8 QBD 9 (refd)

Chng Kiat Leng, Re [1963] MLJ 25 (refd)

Damodaran v Vesudevan [1975] 2 MLJ 231 (folld)

Dato Mohd Hashim Shamsuddin v The Attorney General, Hongkong [1986] 2 MLJ 112 (refd)

H Young & Co v The Mayor & Corporation of Royal Leamington SPA (1882–83) 8 App Cases 517 (folld)

Hanlon v The Law Society [1981] AC 124 (refd)
Jennings & Anor v Kelly [1940] AC 206 (folld)
Lee Lee Cheng (f) v Seow Peng Kwang [1960] MLJ 1 (folld)
Majlis Peguam Malaysia & Ors v Au Kong Weng Joseph [1993] 2 MLJ 57 (refd)
Pahang South Union Omnibus Co Bhd v Minister of Labour & Manpower & Anor [1981] 2 MLJ 199 (not folld)
R Rama Chandran v The Industrial Court of Malaysia & Anor [1997] 1 MLJ 145 (folld)
T Damodaran v Choe Kuan Him [1979] 2 MLJ 267 (refd)
Zainal Abidin bin Hj Abdul Rahman v Century Hotel Sdn Bhd [1982] 1 MLJ 260 (folld)

(5) (Per **Edgar Joseph Jr FCJ**) To determine whether the time period in s 15(5) of the Legal Profession Act is mandatory or directory in nature, the real intention of the legislature must be determined. The prima facie presumption is that subject to the context in which the words appear, the use of the word 'shall' in s 15(5) is taken to import some sort of obligation in contradistinction to the word 'may' (see p 295C).

(6) (Per **Edgar Joseph Jr FCJ**) It should be noted that under the Act, no power is given to the court to abridge the time period of posting prescribed in s 15(5) and this is emphasized by the contrast s 15(5) displays when it is compared with ss 15(3) and 16(1) wherein time is mentioned and the words 'or such shorter time as the court may allow' occur. In such a situation, the presumption that a deliberate change of wording denotes a change in meaning, can be invoked (see p 295D); *Ricket v Metropolitan Ry Co* (1867) LR 2 HL 175 followed.

(7) (Per **Edgar Joseph Jr FCJ**) The purpose of s 15(5) is to give notice to the world at large that a particular individual has petitioned to the court to be admitted and enroled as an advocate and solicitor to enable any member of the public who wishes to object to enter a caveat under s 17 of the Legal Profession Act. The three-month period is incorporated into s 15(5) as a reasonable period of time for such notice and it is not for the court to query legislation but merely to give effect to the will of Parliament as expressed in the law. As no hearing date is specified in the notice that a petitioner has petitioned, allowing an abridgement of the time period could frustrate the purpose of s 15(5). Hence, the time period under s 15(5) is mandatory (see pp 295E, G and 296C–D).

(8) (Per **Edgar Joseph Jr FCJ**) It should be recognized that para 8 of the Schedule is a general measure and speaks about powers of the High Court to enlarge or abridge time prescribed by any written law, whereas s 15(5) is a specific measure with no power given to enlarge or abridge time. There is thus an apparent conflict between these two measures, and in such a situation, the specific measure overrides the general measure

(see p 296F–G); *Lee Lee Cheng (f) v Seow Peng Kwan* [1960] MLJ 1 followed.

(9) (Per **Edgar Joseph Jr FCJ**) It follows that the words of s 25(2) of the Act, '... the High Court shall have the additional powers set out in the Schedule' are not merely declaratory of the powers of the High Court but are power-conferring words. The decision of the Federal Court in *Pahang South Union Omnibus Co Bhd v Minister of Labour & Manpower & Anor* [1981] 2 MLJ 199, to the contrary, on this point, disapproved, since it had treated the word 'power' in s 25(2) and in para 1 of the Schedule to the Act as though it means no more than jurisdiction (see pp 297I and 298A–B); *Lee Lee Cheng (f) v Seow Peng Kwan* [1960] MLJ 1 followed.

(10) (Per **Edgar Joseph Jr FCJ**) Section 25(2) of the Act and the proviso thereto, read in conjunction with para 8 should be interpreted to mean that the exercise of the power under para 8 should be made in accordance with written laws or rules of court relating to the same. The proviso does not mean that if no written laws or rules of court exist that the general power conferred by para 8 cannot be exercised (see p 297B); *Damodaran v Vesudevan* [1975] 2 MLJ 231 and *Rama Chandran v Industrial Court of Malaysia & Anor* [1997] 1 MLJ 145 followed.

(11) (Per **Edgar Joseph Jr FCJ**) Hence, s 15(5) is mandatory, and thus prohibits the court from abridging the time limit therein by resorting to its general power under para 8 of the Schedule. To hold otherwise would be in direct contradiction of s 25(2) of the Act and therefore not in accordance with written law (see p 298C–D).

Obiter:

(Per **Edgar Joseph Jr FCJ**) Exceptionally, where a provision as to time in a particular statute is, having regard to its context, merely directory, but no power to extend or abridge time is given thereunder to the court, there is no reason why in appropriate circumstances, the court should not exercise its general powers under para 8 of the Schedule. Furthermore, the proviso to para 8 of the Schedule is statutory recognition of the principle that there is no general judicial discretion, outside the Limitation Act enabling the court to relieve a suitor from the provisions of the Limitation Act on the ground of hardship and the court cannot override the provisions of the Limitation Act on equitable considerations (see pp 298I and 299A–C); *Maqbul Ahmad v Onkar Prata Narain Singh* AIR 1935 PC 85 and *Nathan s/o Arumugam v Chin Jin Tse* [1982] 2 CLJ 555 followed.

Cases referred to

Chng Kiat Leng, Re [1963] MLJ 25 (refd)
Damodaran v Vesudevan [1975] 2 MLJ 231 (folld)

Howard v Bodington (1877) 2 PD 203 (refd)
ICI Ltd v Shatwell [1965] AC 656 (refd)
Lee Lee Cheng (f) v Seow Peng Kwang [1960] MLJ 1 (folld)
Lee Lian & Ors v PP [1956] MLJ 191 (refd)
Majlis Peguam Malaysia & Ors v Au Kong Weng Joseph [1993] 2 MLJ 57 (refd)
Maqbul Ahmad v Onkar Prata Narain Singh AIR 1935 PC 85 (folld)
Nathan s/o Arumugam v Chin Jin Tse [1982] 2 CLJ 555 (folld)
Pahang South Union Omnibus Co Bhd v Minister of Labour & Manpower & Anor [1981] 2 MLJ 199 (overd)
R v Committee of Lloyd's ex parte Moran (1983) Times, 24 June (refd)
R v Leicester JJ (1827) 7 B & C 6 (refd)
R Rama Chandran v The Industrial Court of Malaysia & Anor [1997] 1 MLJ 145 (folld)
Ricket v Metropolitan Ry Co (1867) LR 2 HL 175 (folld)

[Bahasa Malaysia summary

Penentang memohon melalui saman dalam kamar untuk penyingkatan masa yang dikehendaki di bawah s 15(5) Akta Profesyen Undang-Undang 1976 untuk penampalan notis petisyennya bagi penerimaan sebagai peguambela dan peguamcara. Oleh kerana s 15(5) tidak mengandungi peruntukan nyata untuk penyingkatan, penentang mengasaskan permohonannya atas kuasa tambahan Mahkamah Tinggi seperti yang terkandung dalam perenggan 8 Jadual ('Jadual tersebut') kepada Akta Mahkamah Kehakiman 1964 ('Akta tersebut').

Mahkamah Tinggi memutuskan bahawa tempoh tiga bulan untuk penampalan dalam s 15(5) adalah berbentuk arahan dan bukannya mandatori, dan bahawa Mahkamah Tinggi mempunyai kuasa yang perlu untuk membenarkan permohonan itu setelah membaca s 25(2) Akta tersebut dibaca bersama dengan perenggan 8 Jadual. Hakim bergantung kepada *Lee Lee Cheng (f) v Seow Peng Kwang* [1960] MLJ 1 ('*Lee Lee Cheng*') untuk membuat perbezaan di antara perkataan-perkataan 'bidang kuasa' yang digunakan dalam Ordinan yang telah dimansuhkan dan 'kuasa' yang digunakan dalam seksyen-seksyen yang sepadan dalam Akta tersebut yang menggantikan Ordinan itu dan mena'akul bahawa penggantian'kuasa' bagi 'bidang kuasa' dalam perenggan 8 Jadual adalah kuasa am yang mengurniakan dengan sendiri, dan tidak ada keperluan untuk merujuk kepada statut mengurnia kuasa sendiri yang lain yang berkaitan dengan perkara subjek berkenaan sebelum kuasa tersebut boleh dilaksanakan. Kuasa nyata penyingkatan dalam ss 15(3) dan 16 Akta Profesyen Undang-Undang adalah tidak diperlukan dan, walaupun tanpa perkataan-perkataan ini, mahkamah masih boleh menyingkatkan tempoh masa berdasarkan kepada perenggan 8 Jadual. Mahkamah Tinggi dengan itu melaksanakan budi bicaranya dan menyingkatkan tempoh masa kepada satu minggu.

Perayu-perayu membuat rayuan terhadap keputusan itu, menyatakan bahawa hakim perbicaraan silap dalam undang-undang

dalam memutuskan bahawa mahkamah mempunyai kuasa untuk melanjutkan atau menyingkatkan tempoh masa dalam s 15(5) Akta Profesyen Undang-Undang 1976 memandangkan kepada s 25(2) Akta tersebut dan perenggan 8 Jadual. Adalah dihujahkan bahawa tempoh masa tiga bulan dalam s 15(5) adalah mandatori, dan bahawa peninggalan yang disengajakan fasal penyingkatan yang didapati dalam ss 15(3) dan 16 Akta Profesyen Undang-Undang 1976 menyokong sifat mandatori tempoh masa itu. Penggunaan *Lee Lee Cheng* telah dikritik dan perayu-perayu berhujah bahawa kuasa dalam perenggan 8 dibaca dengan s 25(2) tidak boleh dilaksanakan secara bebas dalam ketiadaan statut mengurnia kuasa yang berasingan dan bahawa s 25(2) adalah syarat duluan bagi pelaksanaan kuasa di bawah perenggan 8 Jadual. Penggantian 'kuasa' bagi 'bidang kuasa' tidak mewajarkan suatu perubahan dalam tafsiran di antara Ordinan dan Akta tersebut. Oleh kerana tidak ada, kecuali s 15(5) sendiri, mahkamah dengan itu tidak mempunyai kuasa untuk melayan permohonan untuk menyingkatkan tempoh masa. Pentafsiran s 25(2) yang sempit oleh perayu-perayu disokong oleh *Pahang South Union Omnibus Co Bhd v Minister of Labour & Manpower & Anor* [1981] 2 MLJ 199.

Diputuskan, membenarkan rayuan:

(1) (Oleh **Mohd Azmi HMP**) Perenggan 8 Jadual adalah peruntukan am pengurniaan kuasa. Adalah jelas bahawa penggantian yang disengajakan 'bidang kuasa' dalam Ordinan yang telah dimansuhkan itu dengan 'kuasa' dalam peruntukan-peruntukan yang sepadan dalam Akta tersebut tidak dipengaruhi oleh *Lee Lee Cheng*, dan bahawa Parlimen bertujuan sepenuhnya untuk mengurniakan Mahkamah Tinggi dengan tambahan kuasa am yang nyata untuk dilaksanakan secara adil apabila keadaan memerlukan, mengikut apa-apa undang-undang bertulis yang wujud atau kaedah-kaedah mahkamah yang berkaitan (lihat ms 288C–D, H–I); *H Young & Co v The Mayor and Corporation of Royal Leamington SPA* (1882–83) 8 App Cases 517, *Lee Lee Cheng (f) v Seow Peng Kwang* [1960] MLJ 1 diikut dan *Pahang South Union Omnibus Co Bhd v Minister of Labour & Manpower & Anor* [1981] 2 MLJ 199 tidak diikut.

(2) (Oleh **Mohd Azmi HMP**) Perenggan 8 Jadual tidak mempunyai prasyarat kecuali bahawa ia mesti dilaksanakan mengikut apa-apa undang-undang bertulis yang wujud atau kaedah-kaedah mahkamah yang berkaitan. Adalah silap untuk mentafsirkan s 25(2) Akta tersebut sebagai prasyarat kepada pelaksanaan kuasa dalam perenggan 8. Seksyen 25(2) dengan jelasnya memperuntukkan bahawa jika terdapat undang-undang bertulis atau kaedah-kaedah mahkamah berkaitan dengan yang sama, kuasa ini hendaklah dilaksanakan sewajarnya; ia tidak bermakna bahawa jika tidak ada undang-undang bertulis atau kaedah-kaedah mahkamah berkaitan dengan yang sama bahawa

kuasa itu tidak boleh dilaksanakan langsung. Tafsiran literal dan liberal yang diberikan kepada Jadual kepada Akta tersebut dibaca bersama s 25(2) sebagai skim pengurniaan kuasa tambahan bagi mahkamah telah diterima pakai oleh majoriti Mahkamah Persekutuan dan oleh itu adalah jelas bahawa s 25(2) tidak sepatutnya ditafsirkan dalam cara yang sempit dan terlalu teliti.

Jika Parlimen bertujuan untuk menghalang pelaksanaan kuasa ini dalam ketiadaan statut lain, ia akan berkata demikian dalam bahagian gubalan dengan pengecualian terus, dan bukan dengan cara proviso kerana proviso itu tidak sepatutnya ditafsirkan sebagai pengecualian yang tidak konsisten dengan apa yang dinyatakan dengan jelas dalam bahagian gubalan dengan menjadikan bahagian itu secara praktikalnya pincang dan tidak berfaedah (lihat ms 286G, 287B, G–I dan 291D); *Damodaran v Vesudevan* [1975] 2 MLJ 231, *Zainal Abidin bin Hj Abdul Rahman v Century Hotel Sdn Bhd* [1982] 1 MLJ 260, *Aspatra Sdn Bhd & Ors v Bank Bumiputra Malaysia Bhd & Anor* [1988] 1 MLJ 97, *R Rama Chandran v The Industrial Court of Malaysia & Anor* [1997] 1 MLJ 145 dan *Jennings & Anor v Kelly* [1940] AC 206 diikut.

(3) (Oleh **Mohd Azmi HMP**) Dalam menentukan sama ada tempoh masa seperti yang dinyatakan dalam s 15(5) Akta Profesyen Undang-Undang 1976 adalah bersifat mandatori atau arahan, peraturannya adalah masa yang ditetapkan dalam mana-mana undang-undang bertulis adalah selalu dianggap dan ditafsirkan sebagai mandatori melainkan terdapat kuasa yang nyata dalam undang-undang yang tertentu untuk menyingkat atau melanjutkan masa. Oleh itu, tempoh masa dalam s 15(5) adalah mandatori kerana Parlimen telah dengan sengaja meninggalkan fasal nyata penyingkatan yang didapati dalam ss 15(3) dan 16 Akta Profesyen Undang-Undang. Hanya kerana perenggan 8 Jadual mengurniakan kuasa penyingkatan am, tidak bermakna bahawa Parlimen adalah dihalang daripada mengurniakan kuasa penyingkatan nyata dalam apa-apa peruntukan perundangan yang tertentu, dan ia juga tidak bermakna bahawa parlimen tidak boleh menghalang kuasa am sedemikian daripada digunakan sama ada secara nyata atau dengan implikasi perlu. Sebagai tambahan, perubahan dalam tempoh masa dalam s 15(5) boleh menjejaskan hak pihak ketiga daripada melaksanakan hak mereka untuk memasukkan kaveat terhadap penerimaan masuk pempetisyen ke badan peguam (lihat ms 290E–F dan 291D–E, I).

(4) (Oleh **Mohd Azmi HMP**) Walaupun Mahkamah Tinggi mempunyai kuasa untuk menggunakan kuasa budi bicara amnya untuk penyingkatan di bawah perenggan 8 Jadual, kuasa budi bicara ini mesti dilaksanakan secara adil, bukan secara sembarangan atau tidak menentu, dan ia tidak patut dilaksanakan kecuali kehendak keadilan dipenuhi. Oleh itu, walaupun hak-hak pihak ketiga tidak terjejas, mahkamah masih

perlu melaksanakan budi bicaranya mengikut prinsip yang betul. Dalam kes ini, adalah salah bagi hakim perbicaraan melaksanakan kuasa penyingkatan berkaitan dengan s 15(5) Akta Profesyen Undang-Undang (lihat ms 292B–C).

(5) (Oleh **Edgar Joseph Jr HMP**) Untuk menentukan sama ada tempoh masa dalam s 15(5) Akta Profesyen Undang-Undang bersifat mandatori atau arahan, tujuan sebenar badan perundangan mesti ditentukan. Anggapan prima facie adalah bahawa tertakluk kepada konteks dalam mana perkataan-perkataan itu timbul, penggunaan perkataan 'mesti' dalam s 15(5) dianggapkan sebagai meletakkan suatu kewajipan berbanding dengan perkataan 'boleh' (lihat ms 295C).

(6) (Oleh **Edgar Joseph Jr HMP**) Adalah perlu diambil kira bahawa di bawah Akta tersebut, tiada kuasa yang diberikan kepada mahkamah untuk menyingkatkan tempoh masa penampalan seperti yang ditetapkan dalam s 15(5) dan ini ditekankan dengan perbezaan yang ditunjukkan oleh s 15(5) apabila ia dibandingkan dengan ss 15(3) dan 16(1) di mana masa disebutkan dan perkataan-perkataan 'atau apa-apa tempoh masa yang lebih singkat seperti boleh dibenarkan oleh mahkamah' didapati. Dalam keadaan sedemikian, anggapan bahawa penukaran perkataan yang disengajakan menunjukkan perubahan dalam makna, boleh digunakan (lihat ms 295D); *Ricket v Metropolitan Ry Co* (1867) LR 2 HL 175 diikut.

(7) (Oleh **Edgar Joseph Jr HMP**) Tujuan s 15(5) adalah untuk memberikan notis kepada orang ramai bahawa individu tertentu telah mempetisyen kepada mahkamah untuk diterima masuk dan didaftarkan sebagai peguambela dan peguamcara untuk membolehkan mana-mana orang awam yang berhasrat untuk membantah untuk memasukkan kaveat di bawah s 17 Akta Profesyen Undang-Undang. Tempoh masa tiga bulan dimasukkan dalam s 15(5) sebagai tempoh masa yang munasabah untuk notis sedemikian dan mahkamah tidak boleh mempersoalkan perundangan tetapi hanya untuk memberi kesan kepada kehendak Parlimen seperti yang dinyatakan dalam undang-undang. Oleh kerana tarikh perbicaraan tidak ditetapkan dalam notis yang pempetisyen telah kemukakan, membenarkan penyingkatan tempoh masa boleh mematahkan tujuan s 15(5). Oleh itu, tempoh masa di bawah s 15(5) adalah mandatori (lihat ms 295E, G dan 296C–D).

(8) (Oleh **Edgar Joseph Jr HMP**) Adalah perlu dikenal pasti bahawa perenggan 8 Jadual adalah langkah am dan menyebut tentang kuasa-kuasa Mahkamah Tinggi untuk melanjutkan atau menyingkatkan masa yang ditetapkan oleh apa-apa undang-undang bertulis, manakala s 15(5) adalah langkah spesifik dengan tiada kuasa diberikan untuk melanjutkan atau menyingkatkan masa. Oleh itu, terdapat konflik yang jelas di antara kedua-dua langkah ini dan dalam keadaan sedemikian, langkah spesifik mengatasi langkah am (lihat ms 296F–G); *Lee Lee Cheng (f) v Seow Peng Kwan* [1960] MLJ 1 diikut.

(9) (Oleh **Edgar Joseph Jr HMP**) Ekoran dari itu, perkataan-perkataan s 25(2) Akta tersebut, '... Mahkamah Tinggi mempunyai kuasa-kuasa tambahan seperti yang dinyatakan dalam Jadual' bukan hanya perisytiharan kuasa-kuasa Mahkamah Tinggi tetapi merupakan perkataan-perkataan mengurniakan kuasa. Keputusan Mahkamah Persekutuan dalam *Pahang South Union Omnibus Co Bhd v Minister of Labour & Manpower & Anor* [1981] 2 MLJ 199, sebaliknya, atas perkara ini, tidak dipersetujui, kerana ia telah menyifatkan perkataan 'kuasa' dalam s 25(2) dan dalam perenggan 1 Jadual seolah-olah ia bermakna tidak lebih daripada bidang kuasa (lihat ms 297I dan 298A–B); *Lee Lee Cheng (f) v Seow Peng Kwan* [1960] MLJ 1 diikut.

(10) (Oleh **Edgar Joseph Jr HMP**) Seksyen 25(2) Akta tersebut dan provisonya, dibaca bersama dengan perenggan 8 sepatutnya ditafsirkan untuk memberi makna bahawa pelaksanaan kuasa di bawah perenggan 8 sepatutnya dibuat mengikut undang-undang bertulis atau kaedah-kaedah mahkamah yang berkaitan. Proviso itu tidak bermakna bahawa jika tidak ada undang-undang bertulis atau kaedah-kaedah mahkamah wujud bahawa kuasa am yang dikurniakan oleh perenggan 8 tidak boleh dilaksanakan (lihat ms 297B); *Damodaran v Vesudevan* [1975] 2 MLJ 231 dan *Rama Chandran v Industrial Court of Malaysia & Anor* [1997] 1 MLJ 145 diikut.

(11) (**Oleh Edgar Joseph Jr HMP**) Oleh itu, s 15(5) adalah mandatori, dan oleh itu menghalang mahkamah daripada menyingkatkan had masa di dalamnya dengan menggunakan kuasa am di bawah perenggan 8 Jadual. Dengan memutuskan sebaliknya merupakan percanggahan terus s 25(2) Akta tersebut dan oleh itu tidak mengikut undang-undang bertulis (lihat ms 298C–D).

Obiter:

(Oleh **Edgar Joseph Jr HMP**) Sebagai pengecualian, di mana peruntukan berkenaan dengan masa dalam statut tertentu adalah, mengambil kira konteksnya, hanya arahan, tetapi tiada kuasa untuk melanjutkan atau menyingkatkan masa diberikan di bawahnya kepada mahkamah, tidak ada sebab mengapa dalam keadaan-keadaan yang sesuai, mahkamah tidak patut melaksanakan kuasa amnya di bawah perenggan 8 Jadual. Tambahan pula, proviso kepada perenggan 8 Jadual adalah pengesahan statutori prinsip bahawa tidak ada budi bicara kehakiman am, di luar Akta Had Masa yang membolehkan mahkamah untuk melepaskan plaintif daripada peruntukan-peruntukan Akta Had Masa atas pertimbangan ekuiti (lihat ms 298I dan 299A–C); *Maqbul Ahmad v Onkar Prata Narain Singh* AIR 1935 PC 85 dan *Nathan s/o Arumugam v Chin Jin Tse* [1982] 2 CLJ 555 diikut.]

A **Notes**

For cases on admission of an advocate and solicitor, see 9 *Mallal's Digest* (4th Ed, 1995 Reissue) paras 1345–1423.

For cases on abridgement of time, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 3545–3585.

B For cases on jurisdiction of court, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 2092–2255.

Complete list of cases referred to

Aspatra Sdn Bhd & Ors v Bank Bumiputra Malaysia Bhd & Anor [1988] 1 MLJ 97

C *Barker v Palmer* (1881) 8 QBD 9

Chng Kiat Leng, Re [1963] MLJ 25

Damodaran v Vesudevan [1975] 2 MLJ 231

Dato Mohd Hashim Shamsuddin v The Attorney General, Hongkong [1986] 2 MLJ 112

D *H Young & Co v The Mayor & Corporation of Royal Leamington SPA* (1882–83) 8 App Cases 517

Hanlon v The Law Society [1981] AC 124

Howard v Bodington (1877) 2 PD 203

ICI Ltd v Shatwell [1965] AC 656

E *Jennings & Anor v Kelly* [1940] AC 206

Lee Lee Cheng (f) v Seow Peng Kwang [1960] MLJ 1

Lee Lian & Ors v PP [1956] MLJ 191

Majlis Peguam Malaysia & Ors v Au Kong Weng Joseph [1993] 2 MLJ 57

F *Maqbul Ahmad v Onkar Prata Narain Singh* AIR 1935 PC 85

Nathan s/o Arumugam v Chin Jin Tse [1982] 2 CLJ 555

Pahang South Union Omnibus Co Bhd v Minister of Labour & Manpower & Anor [1981] 2 MLJ 199

R v Committee of Lloyd's, ex p Moran (1983) Times, 24 June

R v Leicester JJ (1827) 7 B & C 6

G *R Rama Chandran v The Industrial Court of Malaysia & Anor* [1997] 1 MLJ 145

Ricket v Metropolitan Ry Co (1867) LR 2 HL 175

T Damodaran v Choe Kuan Him [1979] 2 MLJ 267

Zainal Abidin bin Hj Abdul Rahman v Century Hotel Sdn Bhd [1982] 1 MLJ 260

H

Legislation referred to

Civil Law Ordinance 1956 s 8(3)(b)

Courts Ordinance 1948 s 47, Second Schedule

I Courts of Judicature Act 1964 ss 4, 15(3), 16(1), 25(2), Schedule para 8

Interpretation Act 1967

Legal Profession Act 1976 ss 15(3),(5), 16(1), 17

Appeal from: Petition No 18–566–92 (High Court, Kuala Lumpur) A

Robert Lazar (*Shearn Delamore & Co*) for the appellants.
KS Narayanan (*Saranjit Singh* with him) (*KS Narayanan & Associates*) for the respondent. B

Mohd Azmi FCJ: The respondent in this appeal has applied by summons in chambers for abridgement of the time required under s 15(5) of the Legal Profession Act 1976 ('the 1976 Act') for posting notices of his petition for admission as an advocate and solicitor. As s 15(5) of the 1976 Act does not contain any express provision for abridgement, the respondent C grounded his application on the additional power of the High Court as contained in para 8 of the Schedule to the Courts of Judicature Act 1964 ('the 1964 Act'). After hearing arguments, the learned trial judge in the court below concluded that the period of posting under consideration is not mandatory but merely directory, and that the High Court has the D necessary power to allow the application even though s 15(5) is silent, both on the power of the court to abridge or on any prohibition against abridgement. His Lordship went further to say that the words 'or such shorter period as the court may allow' found in the related ss 15(3) and 16(1) of the 1964 Act were superfluous, for even without these words, time could still be abridged by the court under the ombudsman judicial E power conferred by s 25(2) read with para 8 of the Schedule to the 1964 Act. In the exercise of his discretion, the learned judge ordered the three-month period of posting to be abridged to one week. The Attorney-General and the Bar Council together with the Bar Committee of Kuala Lumpur are dissatisfied with the said order, but only the Bar Council and Bar Committee have decided to proceed with the appeal. F

At the outset of the appeal, Mr Robert Lazar for the Bar Council and Bar Committee makes it abundantly clear that the appellants are purely concerned with the law, and that they are not interested in the merits of the application. By this concession, the Malaysian Bar and the Bar Committee of Kuala Lumpur must be taken to have abandoned their only G other ground of appeal, leaving only one ground for argument and determination, namely whether the learned trial judge erred in law in holding that the court has power to extend or abridge the time period of three months prescribed by s 15(5) of the 1976 Act by virtue of the powers conferred, particularly by para 8 of the Schedule to s 25(2) of the 1964 Act. H

In concluding that the High Court had power and not merely jurisdiction to grant the order of abridgement, the learned trial judge in his grounds of judgment referred to the provisions of the Second Schedule to the Courts Ordinance 1948, the forerunner of the Schedule to the 1964 Act. He argued that para 8 of the 1964 Schedule was taken from para 12 I of the 1948 Second Schedule, but there was one important distinction, namely the word 'jurisdiction' in the 1948 Second Schedule had been substituted throughout with the word 'power', not only in the Schedule but also in s 25 of the 1964 Act. In addition, a new proviso was added to para 8.

Section 25(2) provides:

> Without prejudice to the generality of subsection (1) the High Court shall have the additional powers set out in the Schedule:
>
> Provided that all such powers shall be exercised in accordance with any written law or rules of court relating to the same.

Paragraph 8 states:

> Time
>
> Power to enlarge or abridge the time prescribed by any written law for doing any act or taking any proceeding, although any application therefor be not made until after the expiration of the time prescribed:
>
> Provided that this provision shall be without prejudice to any written law relating to limitation.

By comparison, the relevant provisions under the repealed Courts Ordinance 1948 provided:

> *Section 47*
>
> The original civil jurisdiction of the High Court shall be as set out in the Second Schedule hereto.
>
> *Paragraph 12 of the Second Schedule*
>
> Jurisdiction to enlarge or abridge the time prescribed by any written law for doing any act or taking any proceeding, although any application therefor be not made until after the expiration of the time prescribed.

The learned judge relied on the 1959 judgment of Thomson CJ (as he then was) in the Court of Appeal case of *Lee Lee Cheng (f) v Seow Peng Kwang* [1960] MLJ 1 to draw the subtle distinction between the words 'jurisdiction' used in the Second Schedule to the 1948 Ordinance and 'power' in the Schedule to the 1964 Act, and in concluding that the provision of s 25 together with para 8 is a power-conferring provision, his Lordship concluded:

> In my view, the High Court has under item 8 of the Schedule to the Courts of Judicature Act 1964, the general power to enlarge or abridge any time prescribed by any written law for doing any act or taking any proceeding. Power need not be expressly given in any particular written law.

In short, the learned judge held that based on the difference between 'jurisdiction' and 'power' as enunciated by Thomson CJ in *Lee Lee Cheng*, the word 'power' in para 8 is a self-conferring general power, without any further need to look for another power-conferring statute relating to the particular subject-matter, before the said power could be exercised.

Mr Robert Lazar criticizes the adoption of *Lee Lee Cheng* for the purpose of construing the word 'power' in the 1964 Act. It is his submission that the power conferred by para 8 is merely declaratory, ie an enabling power, and no change in interpretation is warranted merely because Parliament has substituted the word 'jurisdiction' in the 1948 Ordinance with 'power' in the 1964 Act. It is further contended that it is the proviso to s 25(2) which has rendered the power declaratory by imposing a condition for the exercise of the said power which requires the existence of

a separate power-conferring written law or rules of court relating to abridgement and/or extension of time. As there is none, except for s 15(5) itself, the court has no power to entertain the application under para 8 to abridge the time prescribed by s 25(5) of the 1976 Act. If counsel's restrictive interpretation of the proviso to s 25(5) is correct, then clearly it may be argued that the power in para 8 read with s 25(2) cannot be exercised independently in the absence of a separate power-conferring statute. In support of his argument, counsel relies on the judgment of the Federal Court in *Pahang South Union Omnibus Co Bhd v Minister of Labour & Manpower & Anor* [1981] 2 MLJ 199 which has given the proviso a crippling effect on the main provision of s 25(2) allegedly on the basis of harmonious construction of the statutory provision. At p 204, Abdoolcader J (as he then was), speaking in the Federal Court, had this to say after dismissing an argument by the appellant on the applicability of s 4 of the 1964 Act for the purpose of invoking the additional power of the High Court:

> There is, however, in any event no conflict or inconsistency between the provisions of s 25(2) and para 1 of the Schedule to the Courts of Judicature Act and s 9(5). The proviso to s 25 of the Courts of Judicature Act specifically enacts that all such powers of the High Court in the exercise of its jurisdiction as are referred to therein shall be exercised in accordance with any written law or rules of court relating to the same. The proviso limits or qualifies what precedes it and the whole section inclusive of the proviso is to be read in such a manner that they mutually throw light on each other and result in a harmonious construction. The powers conferred on the High Court in the Schedule to the Courts of Judicature Act are only enabling powers empowering the exercise of jurisdiction in respect of the matters specified therein but only in accordance with any written law or rules of court relating thereto. They are merely declaratory of the jurisdiction of the High Court and are subject to restrictions or conditions imposed by legislative provisions pertaining to their exercise and in relation to privative clauses subject to established judicial interpretation that the ouster of jurisdiction can only affect errors of law within the jurisdiction and not without nor if the decision sought to be impugned is a nullity. Section 25(2) of the Courts of Judicature Act does not confer any powers as such but only indicates that there is power to make such orders specified in the Schedule thereto as may be necessary when power so to do is either provided for or is not excluded by some statutory provision and then only within the ambit of its content.

Section 4 of the 1964 Act provides:

> In the event of inconsistency or conflict between this Act and any other written law other than the Constitution in force at the commencement of this Act, the provisions of this Act shall prevail.

Having come to the conclusion that there was no conflict or inconsistency to bring about the operation of s 4, that should have been sufficient to dispose of that appeal. In our view, the statement of the Federal Court imposing a very restrictive interpretation of s 25 and the Schedule thereto is an obiter dicta which this court needs not feel bound to follow. Indeed, in making the statement, the Federal Court did not have the opportunity

A to consider leading authorities on the particular point, particularly the case of *Lee Lee Cheng* and *Damodaran v Vesudevan* [1975] 2 MLJ 231.

In *Lee Lee Cheng*, the Court of Appeal in dismissing an appeal against the refusal of the High Court to extend time prescribed by s 8(3)(b) of the Civil Law Ordinance 1956 to bring proceedings against the estate of a B deceased person held that the prescribed time of 'not later than six months after his personal representative took out representation' was a period of limitation and that para 12 of Pt A of the Second Schedule of the Courts Ordinance 1948 (which is the forerunner of para 8 of the Schedule to the 1964 Act) was merely declaratory of the jurisdiction of the High Court to enlarge the time prescribed by any written law for doing any act or taking C any proceeding, except where there was express power in the particular written law itself which enabled such time to be so enlarged. The main rationale for the judgment is not based on the interpretation of s 47 (which is the predecessor of s 25 of the 1964 Act) but it was because of the word 'jurisdiction' used throughout by the legislature both in s 47 and the D Second Schedule to the 1948 Ordinance. In holding that the High Court had no power to extend a prescribed time under para 12 of the Second Schedule, Thompson CJ emphasized the distinction between the word 'jurisdiction' used in the Second Schedule, and 'power' employed in the Third Schedule in the following manner (at p 3):

> E Throughout, there is a distinction in wording between 'jurisdiction' and 'power' and turning to the Second Schedule and the Third Schedule, the same vital distinction of wording is to be observed. The Second Schedule is headed 'Original Civil Jurisdiction of the High Court' and every item in it, including item 12 with which we are here concerned, commences with the word 'Jurisdiction'. Item 1 is 'Jurisdiction and authority' of a like nature and F extent as are exercised by the Chancery and King's Bench Divisions of the High Court of Justice in England. Item 2 is 'Jurisdiction' under any written law relating to matrimonial causes. And so forth.
>
> The Third Schedule, on the other hand, is headed 'Additional powers of the Courts' and except in items 22 and 26, which only relate to subordinate courts, and item 25, which only relates to the appellate jurisdiction of the G High Court, the word 'jurisdiction' does not occur anywhere in it. Each item, on the other hand, apart from those mentioned, begins with the words 'A Court may'.
>
> It is axiomatic that when different words are used in a statute, they refer to different things and this is particularly so where the different words are, as here, used repeatedly. This leads to the view that in the Ordinance there H is a distinction between the jurisdiction of a court and its powers, and this suggests that the word 'jurisdiction' is used to denote the types of subject matter which the court may deal with and in relation to which it may exercise its powers. It cannot exercise its powers in matters over which, by reason of their nature or by reason of extra-territoriality, it has no jurisdiction. On the other hand, in dealing with matters over which it has jurisdiction, it I cannot exceed its powers.

In *Damodaran v Vesudevan* [1975] 2 MLJ 231, a strong panel of the Federal Court (Suffian LP, Lee Hun Hoe CJ (Borneo) and Wan Suleiman FJ) upheld the order of lis pendens issued by the High Court

under s 25(2) and para 6 of the First Schedule to the 1964 Act. At p 232, Suffian LP expressed the following opinion on the interpretation of s 25(2): A

> In my judgment, sub-s (2) of s 25 of our Courts of Judicature Act is quite clear. It does not say that our High Court may provide for the interim protection of property the subject of litigation by the registration of a lis pendens, if and only if written law or rules of court so provide, as is contended by Mr Mooney. It says quite plainly that the High Court shall have power to provide for the interim protection of such property by the registration of a lis pendens. *The proviso in my judgment means only this: that if there are written laws or rules of court relating to the same, then this power must be exercised in accordance with them. The proviso does not mean that if there are no written laws or rules of court relating to the same, then the power cannot be exercised at all.* B C
>
> *To agree with Mr Mooney would be to nullify the clear language of sub-s (2) of s 25.* (Emphasis added.)

Although the Federal Court decision was reversed by the Privy Council (see *T Damodaran v Choe Kuan Him* [1979] 2 MLJ 267), it was not on the ground that the High Court had no power under item 6 of the Schedule to issue lis pendens but it was on the ground that the discretionary power ought not to be exercised as the order would serve no useful purpose at all in the circumstances of the case. The Privy Council was of the view that as the Land Code provided for entry of caveat, the entry on the register of an order of lis pendens was a mere *brutum fulmen*, and ought not to be followed. The Privy Council judgment was completely silent and did not interfere with the meaning of s 25(2) as lucidly interpreted by Suffian LP. We are persuaded after hearing argument that the said interpretation is correct and with respect ought to be followed on the additional reason that we will presently advance. D E F

The literal and liberal interpretation given to the Schedule to the 1964 Act read with s 25(2) as an additional power-conferring scheme by Parliament for the superior courts has been repeatedly adopted and followed by majority opinion of the Federal Court in *Zainal Abidin bin Hj Abdul Rahman v Century Hotel Sdn Bhd* [1982] 1 MLJ 260 and *Aspatra Sdn Bhd & Ors v Bank Bumiputra Malaysia Bhd & Anor* [1988] 1 MLJ 97 and more recently in *R Rama Chandran v The Industrial Court of Malaysia & Anor* [1997] 1 MLJ 145. From these authorities, it is clear that the better view is not to interpret s 25(2) in a narrow and pedantic way. As Mr Narayanan for the respondent seems to suggest, we agree that once powers are conferred to the courts by the Legislature, judges should not shy away from these powers by putting up all sorts of barricades along their path. We pose the question of what meaning is to be attached to the proviso to s 25(2) when the enacting part, ie the former or first part, is plain and unambiguous? In our opinion, the answer to the question should be determined by the principle laid down by Lord Wright in *Jennings & Anor v Kelly* [1940] AC 206 at p 229: G H I

> ... No doubt there may be cases in which the first part is so clear and unambiguous as not to admit in regard to the matters which are there clear any reference to any other part of the section; the proviso may simply be an

A exception out of what is clearly defined in the first part, or it may be some qualification not inconsistent with what is expressed in the first part.

Adopting the above principle, we are of the view that in the absence of any ambiguity in the first part, a proviso should not be interpreted in such a way as to totally negative the enacting or first part. Whereas in s 25(2) the B enacting part is very clear, the proviso must be interpreted only as an exception or qualification to the first part, and therefore it is not correct to treat the proviso to s 25(2) as imposing a condition precedent on the first part. The additional powers conferred by the schedule should not therefore be interpreted as restricted by a condition precedent merely because they are to be exercised 'in accordance with any written law or rules of court C relating thereto'. The unambiguous conferment of the power by the enacting part is clearly a different matter from the mode by which such power is to be exercised as contained in the proviso.

The relevant enacting part of s 25(2) clearly and plainly provides that 'the High Court shall have the additional powers set out in the Schedule'. D We cannot imagine how such plain expression of legislative words can ever be doubted as a legislative intention to confer such powers outright. It is therefore difficult to accept that the proviso to that section is intended to provide not merely as an exception to the enacting part but to cripple it completely by imposing a blanket qualification that the court must look for E another power-conferring statute, merely because the proviso requires such powers to be exercised 'in accordance with' any written law or rules of court relating thereto.

It is important to observe that the proviso does not say the statutory powers are 'subject to' any written law which if it is the case may perhaps F attract a condition precedent to the exercise of such powers and therefore entitling this court to conclude that the whole Schedule to the 1964 Act is merely declaratory in nature. Under the canon of statutory interpretation, it is not open to any court to substitute the phrase 'subject to' for the words 'in accordance with'. In our view, the phrase 'in accordance with' in the proviso simply refer to the mode of exercising the power and nothing more G should be read into those words. Further, it is important to construe literally the word 'any' immediately preceding 'written law or rules of court'. In our opinion, what is plainly intended by Parliament is merely that the mode of exercising the powers must be in accordance with any existing written law or rules of court and not in accordance with any H written law or rules to be enacted in the future. If it were the legislative intent to prohibit the exercise of the power in the absence of another statute, it would have said so in the enacting part by direct qualification, and not by way of a proviso, because the proviso should not be interpreted as a qualification which is inconsistent with what is plainly expressed in the enacting part by rendering that part practically lame and useless.

I Thus, the mode of exercising the power to abridge under para 8 must be in accordance with and not contrary to existing written law or rules of court if any. That is the only qualification or exception imposed by the proviso. In the absence of any written law or rules of court relating to

shortening of time, it does not mean that in appropriate cases the additional power cannot be exercised at all. Apart from the 1964 Act itself, it is difficult to imagine if ever the legislature would find it necessary to enact separately another statute or rules relating to the abridgement or extension of time under s 15(5), apart from the existing provisions as to time in the Interpretation and General Clauses Ordinance 1948 and the Interpretation Act 1967.

Mr Robert Lazar also contends that the substitution of the word 'jurisdiction' in the repealed Courts Ordinance 1948 with 'power' in the corresponding provisions of the 1964 Act had nothing to do with the 1959 judgment of the Court of Appeal in *Lee Lee Cheng*. According to him, the substitution was necessitated by the change in the judicial hierarchy brought about by the 1957 Federal Constitution. We are however unable to follow this reasoning. In our view, it is most unlikely that the deliberate substitution of the word 'jurisdiction' with the word 'power' throughout s 25 and the Schedule to the 1964 Act was not necessitated or influenced by the judgment in *Lee Lee Cheng* having regard to the sequence of events. The Court of Appeal's decision which contains a lucid exposition of the legal distinction between jurisdiction and power, was pronounced about three years after Merdeka. Before that decision, it is reasonable to assume that most lawyers and members of the legal fraternity must have thought that the word 'jurisdiction' in s 47 and the Second Schedule to the 1948 Ordinance was wide enough to confer power. Clearly, it was because of the 1959 judicial pronouncement of Thomson CJ that the word 'jurisdiction' was deliberately substituted by Parliament with 'power' when the 1964 Act replaced the 1948 Ordinance. If the Federal Constitution was the reason for the change, then one would have expected Parliament to make the necessary amendments to the 1948 Ordinance either before or on Merdeka Day itself so as to comply with the constitutional requirement pertaining to the judiciary. As stated by Lord Blackburn in *H Young & Co v The Mayor & Corporation of Royal Leamington SPA* (1882–83) 8 App Cases 517 at p 526:

> We ought in general, in construing an Act of Parliament to assume that the legislature knows the existing state of the law.

Thus, when Parliament enacted the 1964 Act, the legislators must be assumed to know the important distinction between the words 'jurisdiction' and 'power' as propounded by Thomson CJ in *Lee Lee Cheng* in 1959 and reported in the [1960] MLJ. Instead of continuing with the use of the word 'jurisdiction' as in the past, Parliament elected to employ the word 'power' repeatedly in the 1964 Act throughout s 25 and the Schedule. In our view, it is obvious that by such deliberate substitution of legislative word, Parliament intended that the High Court should be conferred with outright additional general powers to be exercised judicially whenever circumstances demand, in accordance with any existing written law or rules of court, relating thereto.

In the circumstances, we disagree with Mr Robert Lazar's argument that para 8 of the Schedule to the 1964 Act is not a power-conferring but

A a mere declaratory provision. The general power to abridge a prescribed time must of course be exercised judicially, depending on the facts of each particular case. It also goes without saying that the general provision under para 8 cannot be invoked to defeat or supersede a mandatory requirement of any written law as to time.

B The next important criticism by Mr Robert Lazar against the judgment of the learned judge is in respect of his Lordship's conclusion that s 15(5) of the 1976 Act is not a mandatory provision in so far as the prescribed period of three months posting is concerned, and as such, the said period could be abridged by the court under the general power conferred by para 8 of the Schedule to the 1964 Act. Learned counsel for the appellants C emphasized the fact that unlike related provisions in ss 15(3) and 16(1) of the 1976 Act which carry the words 'or such shorter period as the Court may allow', s 15(5) is glaringly without those words and therefore silent on the power of the court to abridge the prescribed time. The question therefore arises whether in the circumstances, the learned judge ought not D to have exercised his general power of abridgement under the Schedule. In our view, the answer depends on whether the prescribed time of three months continuous posting of the notices under s 15(5) can be construed as mandatory or discretionary. If it is not mandatory, then (subject to the merit of the application which is not disputed here), the High Court is entitled to invoke its general discretionary power of abridgement under E para 8.

The relevant sections of the Act for the purpose of the particular issue in this appeal provide:

Section 15(3)

F Every petitioner shall, not less than fourteen days before his petition is to be heard *or such shorter period of the Court may allow*, file an affidavit ... (Emphasis added.)

Section 15(5)

G The petitioner shall file his petition at the Registrar's Office at the Central Registry accompanied by notices intimating that he has so petitioned; such notices shall be posted and continue to be posted at all the High Courts for three months before the petitioner is admitted and enrolled as an advocate and solicitor.

Section 16(1)

H

A copy each of the petition and the affidavit required to be filed under section 15 together with the true copies of each document exhibited pursuant to that section shall, within seven days of the filing thereof in the Registrar's Office, and not less than ten days *or such shorter period as the Court may allow* before the date fixed for hearing the petition, be served on the Attorney I General, the Bar Council and the State Bar Committee of the State in which the pupil has served any part of his period of pupillage. (Emphasis added.)

Section 17(1)

> Any person may enter a caveat against the admission of any petitioner and upon such caveat being entered no application for the admission of the petitioner shall be heard unless a notice of hearing of not less than three clear days has been served on the person entering the caveat.

Mr Robert Lazar has referred to us the case of *Majlis Peguam Malaysia & Ors v Au Kong Weng Joseph* [1993] 2 MLJ 57 where this court had upheld the decision of the High Court in applying the strict rule of interpretation in construing the time limit imposed by ss 98 and 99 of the 1976 Act as mandatory, and in concluding that non-compliance with the prescribed time rendered a disciplinary proceeding under the 1976 Act including the appointment of the disciplinary committee, illegal, void and of no effect. By the same token, counsel urged upon us to be consistent with our strict approach over any time prescribed by any written law in the absence of any express power to abridge or extend. Although the facts of that case is certainly different from the present appeal, we generally agree with the opinion of Grove J in *Barker v Palmer* (1881) 8 QBD 9, that the provisions with respect to time are always obligatory, ie mandatory unless a power of extending time is given to the court.

On the strict rule of interpretation, it is very clear and plain, especially by comparing s 15(5) with the preceding s 15(3) and the subsequent s 16(1) that the legislature has deliberately left out the words 'or such shorter period as the court may allow' from s 15(5), indicating an obvious fact that the legislature intended the three-month period to be mandatory. Even if the purposive approach of interpretation is applied, s 17 compels us to the conclusion that the prescribed three-month period is mandatory, as any shortening of time would affect the right of third parties, viz members of the general public, from exercising their right to enter caveats against the petitioner's admission to the Malaysian Bar. Indeed, when dealing with the necessity of posting, the learned judge correctly acknowledged the involvement of the right of third parties in his ground of judgment by saying at p 11:

> The posting must be done. This is because notice of the petition must be given to the general public in view of the provision of s 17 of the Act. Under this section, any person may enter a caveat against the admission of any petitioner. But the posting is not meant to bring the petition to the notice of the Bar Council, the Attorney General or the State Bar Committee because there is the requirement under s 16 that they be served with a copy of the petition and under the section they have the right to object to the petition.

We therefore agree with the submission of Mr Robert Lazar that under the provision of ss 15(3) and 16(1), the doing of the act required by those sections does not — unlike s 15(5) — affect the right of third parties and as such, the legislature expressly provides the power of abridgement. The omission of such power from s 15(5) clearly implies that the three-month period is a mandatory requirement, not only because anyone reading the notice would not know the date of hearing of the petition and the time period by which he has to lodge a caveat, but also because the notice is addressed to the world at large and as such it is important that the

prescribed time period of three months which by any standard is not excessive for the purpose of notification to the general public, should not be shortened. Perhaps, the only exception if it can be called an exception, is where it could be shown that the requisite notice had in fact been complied with in a previous petition for admission which had lapsed through no fault of the petitioner (see *Re Chng Kiat Leng* [1963] MLJ 25).

In the circumstances, we do not consider that the express power of abridgement in ss 15(3) and 16(1) is superfluous as suggested by the learned judge in the court below. In interpreting any statutory provision, no words used by Parliament should be construed as superfluous and of no effect whatsoever simply to enable the courts to rewrite the legislative plain language. In our view, the doctrine of absurdity and redundancy in legislative words must be applied with the utmost caution, and it must not be applied when an explanation can in fact be found for such words. Indeed, in interpreting statutes, the courts must in appropriate cases, even take heed of punctuations — see *Hanlon v The Law Society* [1981] AC 124 at pp 197–198 and *Dato Mohd Hashim Shamsuddin v The Attorney General, Hongkong* [1986] 2 MLJ 112 (FC). We therefore hold that merely because para 8 of the schedule to the 1964 Act has conferred a general power of abridgement, it does not follow that Parliament is precluded from conferring express power of abridgement in any particular legislative provision. Similarly, it does not mean that Parliament cannot prohibit such general power from being invoked either expressly or by necessary implication. In this case, we are more than satisfied that the prescribed time in s 15(5) is intended to be mandatory and as such, the court ought not to exercise its general power under para 8 of the 1964 Act to abridge the period of posting. The general powers in the Schedule are discretionary, and like any other discretions, they must be exercised in a way which in all the circumstances best reflect the requirement of justice which for the purpose of ss 15(5) and 17 requires the court to take into account not only the interest of the petitioner and the Bar Council and Bar Committee but also the interest of the general public for whose benefit the provision of s 17 has been specially enacted.

The argument that the provision of s 4 of the 1964 Act cited earlier in this judgment, would confer superiority to para 8 over the provisions of ss 15(3), 15(5) and 16(1), even if valid, cannot be applicable, since such superiority can only apply to a written law 'in force at the commencement' of the 1964 Act, and the 1976 Act is not one of such written laws. In any event, in the context of the general power of abridgement, even if there is inconsistency or conflict between the 1964 Act and the 1976 Act, where the prescribed time in the 1976 Act is mandatory either expressly or by necessary implication, the court would not be acting judicially to invoke such general power to defeat the mandatory provision.

The rule is that a prescribed time in any written law is always presumed and construed as mandatory unless there is express power in that particular law to abridge or extend. The general provision in para 8 of the Schedule is a power-conferring provision which has no pre-condition except that it must be exercised in accordance with any existing written law or rules of court relating thereto. Apart from the interpretation legislation

and the 1976 Act itself, there is no other legislation or rules of court relating to the subject matter under discussion. As such, the general power under para 8 must be exercised in accordance with and not contrary to the mandatory provision of s 15(5). In addition, even if the general discretionary power in para 8 to abridge or extend were applicable, it must be exercised judicially, not arbitrarily or capriciously, and it ought not to be exercised unless the requirement of justice is satisfied. Thus, even assuming for one moment that the provision of s 15(5) had nothing to do with third party rights, and could be construed as not obligatory, the court must exercise the discretion in accordance with correct principle. We accordingly rule that the learned trial judge erred in law in holding that the High Court had power to abridge the time period of three months prescribed by s 15(5) of the 1976 Act, by virtue of the powers conferred by para 8 of the Schedule to s 25(2) of the 1964 Act.

The appeal is therefore allowed with costs both here and below. The order of the High Court is set aside and the deposit is refunded to the appellants.

Edgar Joseph Jr FCJ: I have had the advantage of reading the judgment in draft of my brother Mohd Azmi FCJ and respectfully agree with him that this appeal should be allowed, but as the question of law arising for decision is of general importance, I should like to express my views in words of my own.

The sole question of law for decision in this appeal is whether the High Court is conferred with power, by virtue of the provisions of para 8 of the Schedule to the Courts of Judicature Act 1964 ('the Schedule'), to abridge the period of three months during which the notices preceding the petition for admission to the roll as an advocate and solicitor shall continue to be posted at all the High Courts as required by s 15(5) of the Legal Profession Act 1976 ('the Act').

To put matters in perspective, it would be convenient to set out the following statutory provisions:

Section 25(1) and (2) of the Courts of Judicature Act 1964

(1) Without prejudice to the generality of art 121 of the Constitution the High Court shall in the exercise of its jurisdiction have all the powers which were vested in it immediately prior to Malaysia Day and such other powers as may be vested in it by any written law in force within its local jurisdiction.

(2) Without prejudice to the generality of sub-s (1) the High Court shall have the additional powers set out in the Schedule:

Provided that all such powers shall be exercised in accordance with any written law or rules of court relating to the same.

Paragraph 8 of the Schedule

Power to enlarge or abridge the time prescribed by any written law for doing any act or taking any proceeding, although any application therefor be not made until after the expiration of the time prescribed:

A Provided that this provision shall be without prejudice to any written law relating to limitation.

Section 15 of the Act

(1) This section shall apply to every person who proposes to apply to be admitted and enrolled as an advocate and solicitor.

B (2) An application for admission under this section shall be by a petition to the Court and verified by affidavit.

(3) Every petitioner shall, not less than fourteen days before his petition is to be heard *or such shorter period as the Court may allow*, file an affidavit exhibiting —

C (a) where applicable, true copies of any documentary evidence showing that he is a qualified person;

(b) two recent certificates as to his good character;

(c) a certificate of diligence from his master with whom he served his pupillage in cases where he is required to serve a period of pupillage, or in the absence of such certificate any other evidence as the Court may require showing that he has served such pupillage with

D diligence;

(d) where applicable, a certificate signed by the Secretary of the Board that the petitioner has attended the courses of instruction and passed the examinations, if any, required in his case under this Act;

(e) where applicable, a certificate from his principal that he has

E satisfactorily served the appropriate period as an articled clerk;

(f) true copies of any documentary evidence showing that he is either a Federal citizen or a permanent resident of Malaysia; and

(g) true copies of any documentary evidence that he has passed or is exempted from the Bahasa Malaysia Qualifying Examination.

F (4) The petition, notice, affidavit and certificates referred to in this section shall be in the forms prescribed by the Board.

(5) The petitioner shall file his petition at the Registrar's Office at the Central Registry accompanied by notices intimating that he has so petitioned; such notices shall be posted and continue to be posted at all the High Courts for three months before the petitioner is admitted and

G enrolled as an advocate and solicitor. (Emphasis added.)

Section 16(1) of the Act

A copy each of the petition and the affidavit required to be filed under s 15 together with the true copies of each document exhibited pursuant to that section shall, within seven days of the filing thereof in the Registrar's Office, and not less than ten days *or such shorter period as the Court may allow* before

H the date fixed for hearing the petition, be served on the Attorney General, the Bar Council and the State Bar Committee of the State in which the pupil has served any part of his period of pupillage. (Emphasis added.)

Section 17 of the Act

(1) Any person may enter a caveat against the admission of any petitioner

I and upon such caveat being entered no application for the admission of the petitioner shall be heard unless a notice of hearing of not less than three clear days has been served on the person entering the caveat.

(2) Every caveat under this section shall be entered in the Registrar's Office and shall contain the full name, occupation and address of the caveator,

> a brief statement of the grounds of his objection and an address for service. A

First of all, it is important to consider whether the period of posting set forth in s 15(5) of the Act is mandatory and therefore obligatory or merely directory and therefore discretionary.

In *Majlis Peguam Malaysia & Ors v Au Kong Weng Joseph* [1993] 2 MLJ 57, the Supreme Court had to decide whether the time limits imposed by ss 98 and 99 of the Act with regard to the various steps to be taken in considering a complaint against an advocate and solicitor are mandatory, and if so, whether proceedings under the Act against him, including the appointment of the disciplinary committee, in breach of these time limits were incurably illegal, void and of no effect. The Supreme Court answered these questions — quite correctly, if I may say so — in favour of the advocate and solicitor concerned for reasons which appear sufficiently in its judgment. B C

In the present case, the learned judge in the High Court had rightly held that the requirement in s 15(5) of the Act for the *posting* of notice is mandatory. His reasoning for this view was clear, concise and cogent. This is how he put it: D

> In my view, under s 15(5), the provision for the posting of notice is a mandatory provision. The posting must be done. This is because notice of the petition must be given to the general public in view of the provision of s 17 of the Act. Under this section, any person may enter a caveat against the admission of any petitioner. E

But then, turning to the requirement in s 15(5) as to the *period* of three months during which the notices intimating that a petitioner has petitioned for admission and enrolment as an advocate and solicitor, shall continue to be posted, he added this: F

> But the posting is not meant to bring the petition to the notice of the Bar Council, the Attorney General or the State Bar Committee because there is the requirement under s 16 that they be served with a copy of the petition and under the section they have the right to object to the petition. G

He then concluded:

> In the scheme of things, is it really very important that the notice of the petition to the general public must be for the prescribed period of three months? I do not think so. There may be circumstances which the court can accept as sufficient to justify the shortening of the period. In my view, the provision as to the time frame in s 15(5) is not mandatory. H

The task of the court is to bear steadily in mind that it is the real intention of the legislature that must be ascertained.

There is, however, no rule of thumb to ascertain legislative intention. 'I believe', said Lord Penzance in *Howard v Bodington* (1877) 2 PD 203 (at p 211): I

> as far as any rule is concerned, you cannot safely go further than that in each case you must look to the subject matter; consider the importance of the provision that has been disregarded and the relation of that provision to the

A general object intended to be secured by the Act; and upon a review of the case in that aspect decide whether the matter is what is called imperative or only directory.

It is also worth recalling what Mr Francis Bennion says in his book on *Statutory Interpretation* (2nd Ed) at p 32:

B Where legislation confers some right or benefit on a person which he would not have at common law, the conditions laid down as to the accrual of the right or benefit, unless purely formal, are mandatory. If they are not complied with, the right or benefit will not accrue.

So one starts with the prima facie presumption that subject to the context C in which the words appear, the use of word 'shall', in s 15(5) is taken prima facie to import some sort of obligation in contradiction to the word 'may'.

The next point to note is that under the Act, no power is given to the court to abridge the period of posting in s 15(5) and this is emphasized by the contrast s 15(5) displays when it is compared with s 15(3) and s 16(1) D wherein time is mentioned and the words '*or such shorter period as the Court may allow*' occur. I consider that in a situation such as this, the presumption that a deliberate change of wording denotes a change in meaning, can properly be invoked (see *Ricket v Metropolitan Ry Co* (1867) LR 2 HL 175, per Lord Westbury at p 207).

E Turning to the purpose of s 15(5) of the Act, this must be to give notice to the world at large that a particular individual has petitioned to the court to be admitted and enrolled as an advocate and solicitor, so as to enable any member of the public who wishes to object to enter a caveat under s 17 of the Act. As Thomson CJ said in *Re Chng Kiat Leng* [1963] MLJ 25 (at p 25):

F In relation to notice, the question is, has sufficient public notice been given as to this applicant's intention to apply for admission to enable anybody who knows anything against his character and suitability to come forward and speak?

Why should the period of posting of the required notice be for three months? The corresponding period in Singapore is twice as long (see, G s 16(3) of the Legal Profession Act (Cap 161 1985 Rev Ed)). The answer is that Parliament chose that period because it considered this a reasonable period and it is not for the court to query legislation but merely to give effect to the will of Parliament as expressed in the law.

Then again, if the period for posting were treated as directory only, H and were shortened, what are the consequences which could follow? This is an area where consequential construction should be applied. Two cases may be cited to illustrate this modern approach. In *R v Committee of Lloyd's, ex p Moran* (1983) Times, 24 June, Mustill J (as he then was) said that:

I Statute or contract cannot be interpreted according to its literal meaning without testing that meaning against the practical outcome of giving effect to it.

So also in *ICI Ltd v Shatwell* [1965] AC 656 at p 675 where Lord Radcliffe said:

> ... it sometimes helps to assess the merits of a particular decision if one starts by noticing its results and only after doing that allots to it the legal principles upon which it is said to depend.

Lord Radcliffe added that in the case before him, he had started by considering the consequences of the apparent meaning of the enactment and found these disquieting and proceeded to say:

> I start then with the assumption that something must have gone wrong in the application of legal principles that produce such a result.

In considering this part of the case, it must be recognized that the notice that a petitioner has petitioned does not specify the date of hearing of the petition and so a member of the public wishing to oppose the petition by entry of a caveat under s 17 (which shall contain a brief statement of the grounds of objection) could be disadvantaged if the period of three months prescribed for the posting of notices were capable of abridgment. If, therefore, an order for abridgment can be, and is made, the intention of the legislature in enacting s 15(5) could be frustrated.

In my view, therefore, it is impossible to escape the conclusion that the provision as to time set forth in s 15(5) of the Act is mandatory and therefore obligatory.

The next question to be logically considered is whether, notwithstanding the provision as to time set forth in s 15(5) of the Act being mandatory, power is nevertheless given to the High Court by para 8 of the Schedule to abridge the time limited by s 15(5). This, of course, depends upon the proper construction of para 8 of the Schedule read with s 25(2) of the Courts of Judicature Act 1964, not forgetting the proviso thereto.

It should be recognized that para 8 of the Schedule is a *general measure* and speaks about *powers* of the High Court to enlarge or abridge time prescribed by any written law for the doing of any act or taking any proceeding, *whereas* s 15(5) is *specific measure* with no power given to the court to enlarge or abridge time, and which, in my view, for the reasons stated, is mandatory and therefore obligatory. There is thus an apparent conflict between these two measures, and in such a situation, it is a well known rule of construction that the specific measure overrides the general measure (see, eg *Lee Lian & Ors v PP* [1956] MLJ 191 at p 193, per Thomson J).

Having made this preliminary observation regarding this part of the case, I must go further to consider the proper construction of para 8 of the Schedule read with s 25(2) of the Courts of Judicature Act 1964, not forgetting the proviso thereto.

I respectfully agree with Thomson CJ when in *Lee Lee Cheng (f) v Seow Peng Kwang* [1960] MLJ 1 (CA), he drew a vital distinction between the word 'jurisdiction' appearing in the Second Schedule to the Courts Ordinance 1948, and the word 'power'.

I also respectfully agree with Suffian LP in *Damodaran v Vesudevan* [1975] 2 MLJ 231 when he said with regard to the proviso to s 25(2) of the Courts of Judicature Act 1964:

A In my judgment, sub-s (2) of s 25 of our Courts of Judicature Act is quite clear. It does not say that our High Court may provide for the interim protection of property the subject of litigation by the registration of a lis pendens, if and only if written law or rules of court so provide, as is contended by Mr Mooney. It says quite plainly that the High Court shall have power to provide for the interim protection of such property by the B registration of a lis pendens. *The proviso in my judgment means only this; that if there are written laws or rules of court relating to the same, then this power must be exercised in accordance with them. The proviso does not mean that if there are no written laws or rules of court relating to the same, then the power cannot be exercised at all.*

To agree with Mr Mooney would be to nullify the clear language of sub-s (2) C *of s 25.* (Emphasis added.)

In *R Rama Chandran v Industrial Court of Malaysia & Anor* [1997] 1 MLJ 145 at pp 221–222 in considering the effect of s 25(2) of the Courts of Judicature Act 1964, read with the proviso thereto, in relation to the powers of the High Court in the field of public law remedies under para 1 D of the Schedule, I had, when speaking for the majority of the Federal Court, said this:

> In my view, this was the purpose of the proviso to s 25(2); it is intended simply to make clear the meaning of what has gone before in the enacting clause.
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> Most importantly, it is obvious that the provisions of the proviso to s 25(2) do not affect *powers* of the Court referred to in para 1 of the Schedule to the Courts of Judicature Act 1964 ('the Schedule'); they merely control their *exercise* by stipulating that they shall be exercised in accordance with any written law or rules of court relating to the same. These F requirements, in my view, would be silently implied in s 25(2) even without the proviso.
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> Next, in my view, the words 'in accordance with any written law', are the equivalent of 'not repugnant to', 'not in conflict with' or 'not inconsistent with' statute law. It follows that recourse may be had to para 1 of the Schedule to derive jurisdiction to grant the reliefs specified therein unless G there is explicit statutory prohibition.
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> Similarly, turning to the words 'in accordance with ... rules of court relating to the same', all these words mean is that the *procedure* to move an application for the prerogative orders shall be in accordance with the requirements of O 53.

H If I may say so, it appears to me that the passages in the judgment of Suffian LP in *Damodaran*, quoted above, strongly support what I had said in *Rama Chandran* with regard to the effect of the proviso to s 25(2) of the Courts of Judicature Act 1964.

It follows, therefore, that the words of s 25(2) of the Courts of I Judicature Act 1964, '... the High Court *shall have the additional powers* set out in the Schedule' are not merely declaratory of the powers of the High Court but are power conferring words.

Accordingly, I have no qualms whatever in holding that that part of the judgment of Eusoffe Abdoolcader J (as he then was) in *Pahang South*

Union Omnibus Co Bhd v Minister of Labour & Manpower & Anor [1981] 2 MLJ 199, where he considers the effect of s 25(2) of the Courts of Judicature Act 1964, in the context of the powers of the High Court in the field of public law remedies provided in para 1 of the Schedule, was given per incuriam, since he had treated the word 'power' occurring in s 25(2) and in para 1 of the Schedule, as though it means no more than 'jurisdiction' thus, in effect, rewriting the relevant statutory provisions. In so doing, he ignored the vital distinction between 'jurisdiction' and 'power' to which Thomson CJ drew attention in *Lee Lee Cheng* (supra) and also overlooked the passage in the judgment of Suffian LP in *Damodaran* (supra) reproduced above, on the effect of the proviso to s 25(2).

Having said that, I have to point out that in the present case, there is a written law, to wit, s 15(5) of the Act, wherein the provision as to time, is *obligatory*, which thus *prohibits* the High Court from abridging the time limited therein, by resort to its general powers under para 8 of the Schedule or otherwise. In other words, any attempt to abridge the time limited under s 15(5) of the Act, by resort to para 8 of the Schedule, would be in direct contradiction of the provisions of the proviso to s 25(2) of the Courts of Judicature Act 1964, and therefore *not in accordance* with written law.

With profound respect, therefore, in the present case, I regret that I am unable to agree with the learned judge in the High Court, that it was open to him to exercise his powers under para 8 of the Schedule to abridge the time limited under s 15(5) of the Act.

Before departing from the present case, there are two matters upon which I should like to make some observations regarding the general powers of the High Court under para 8 of the Schedule.

Having held that the provision as to time in s 15(5) of the Act is mandatory and therefore obligatory since there is no provision therein giving power to the High Court to abridge such time, and that resort to the general power to abridge such time under para 8 of the Schedule would be in direct contradiction of the provisions of the proviso to s 25(2) of the Courts of Judicature Act 1964, the question then arises: in what circumstances would resort to para 8 of the Schedule be justified?

It is true that on general principle, where a statute regulates the exercise of a right or power, or the use of a prescribed procedure, express reference to time being made, there is a marked inclination on the part of the court to regard the relevant provision as obligatory unless a power of extending or abridging the time is given to the court. But, in rare cases, a provision as to time in a statute may be directory only even though no such power is given to the court. So, for example, in *R v Leicester JJ* (1827) 7 B & C 6 at p 12, the Quarter Sessions Act 1814, provided that the Michaelmas quarter sessions should be held in the week next after 11 October, but it was held that this provision was merely directory as to the time for holding the session.

Exceptionally, therefore, where a provision as to time in a particular statute is, having regard to its context, merely *directory*, but no power to

A extend or abridge time is given thereunder to the court, then I can think of no reason why, in appropriate circumstances, the court should not exercise its general powers under para 8 of the Schedule.

The next point to which I should like to direct attention is the proviso to para 8 of the Schedule which reads:

B

> Provided that this provision shall be without prejudice to any written law relating to limitation.

In my view, this proviso is statutory recognition of the principle laid down by the Judicial Committee of the Privy Council more than 60 years ago in *Maqbul Ahmad v Onkar Prata Narain Singh* AIR 1935 PC 85, that there is C no general judicial discretion, outside the Limitation Act, enabling the court to relieve a suitor from the provisions of the Limitation Act on the ground of hardship and the court cannot override the provisions of the Limitation Act on equitable considerations (see also *Nathan s/o Arumugam v Chin Jin Tse* [1982] 2 CLJ 555).

D In the result, I would respectfully concur with the orders proposed by Mohd Azmi FCJ in the final paragraph of his judgment.

Appeal allowed.

Reported by K Tang-Wai

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